

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0328

SENATE BILL NO. 43

Introduced by: The Committee on Transportation at the request of the Department of
Transportation

1 FOR AN ACT ENTITLED, An Act to authorize acquisition of utility corridors and to authorize
2 the use of such property to be regulated by administrative rule.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The Department of Transportation may acquire by gift, devise, purchase, or condemnation,
7 an easement or fee interest in real estate, other than a right-of-way, for the purpose of providing
8 a suitable location for the relocation of utility lines and facilities displaced as a result of a
9 highway construction project. After all displaced utility lines and facilities have been
10 appropriately relocated, the department may allow the use of such property by additional utilities
11 under the terms and conditions established by the department. The South Dakota Transportation
12 Commission may provide, by rules promulgated pursuant to chapter 1-26, for the terms and
13 conditions for use of such property by utilities.

14 Section 2. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as
15 follows:



1 No owner or operator of utility lines or facilities misplaced as a result of a highway
2 construction project may be compelled to relocate those utility lines or facilities to either an
3 easement or a fee interest acquired pursuant to section 1 of this Act.

4 Section 3. That § 31-19-2 be amended to read as follows:

5 31-19-2. Before acquiring land or material ~~for rights-of-way and borrow pit, either by~~
6 ~~purchase or~~ by condemnation, the Department of Transportation shall, by resolution, declare the
7 necessity for acquiring the land or material and file a copy of the resolution with the office of
8 right-of-way in the department of Transportation.

9 Section 4. That § 31-19-3 be amended to read as follows:

10 31-19-3. If land or material ~~for right-of-way and borrow pit~~ is to be acquired by
11 condemnation, the Department of Transportation, on behalf of the state and in its name, shall
12 file a petition in the circuit court for the county in which the property to be taken or damaged
13 is situated, praying that the just compensation be made and such property be ascertained by a
14 jury and shall name the Department of Transportation as the department of the state government
15 desiring to take or damage ~~said~~ the property on behalf of the state as plaintiff. All persons
16 having an interest in or a lien upon the property affected by the proceedings shall be named as
17 defendants so far as they ~~shall~~ may be known at the time of the filing of ~~same~~ the petition. It
18 shall contain a description of the property to be taken or damaged and shall contain a copy of
19 the related resolution of necessity; that was passed by the Transportation Commission ~~in relation~~
20 ~~thereto~~. The purpose for which the property is to be taken or damaged shall be clearly set forth
21 in the petition. It ~~shall~~ is not ~~be~~ necessary to specify the interest or claim of the several
22 defendants in the land or property affected by the proceedings. ~~Said~~ The petition shall be signed
23 and verified in the manner and as provided by § 15-6-11 relating to the signing of pleadings in
24 the circuit courts.

Section 5. That § 31-19-19 be amended to read as follows:

31-19-19. Whenever any land ~~or lands~~, easement in ~~same~~ land or material is necessary for right-of-way in order to make a safe or proper grade, for the relocating of utility facilities, or for widening, changing, relocating, constructing, reconstructing, maintaining, or repairing any portion of the state trunk highway, or ~~whenever~~ if it is necessary for providing cut slopes, borrow pits, channel changes, or to afford unobstructed vision on ~~said any~~ state trunk ~~highways~~ highway and at any point of danger to public travel, for right-of-way and borrow pit, the State of South Dakota, through and by its Department of Transportation, or ~~counties which have been~~ any county authorized by agreement to acquire on behalf of the state ~~of South Dakota by agreement~~, shall acquire and pay for the same out of state highway funds unless it is otherwise agreed. The cost of ~~said~~ the land or material and expense of purchase or condemnation shall be paid as part of the cost of the state trunk highway unless otherwise agreed.

Section 6. That § 31-19-20 be amended to read as follows:

31-19-20. Whenever any land or material, dirt, sand, or gravel is required for the construction, reconstruction, maintaining, or repairing of any portion of the state trunk highway, ~~which~~ or for the relocating of utility facilities, and if the land or material, dirt, sand, or gravel lies outside the right-of-way of ~~said the~~ highway or adjacent borrow pits, ~~it shall be the duty of the state to~~ shall purchase or condemn ~~said the~~ land or material, dirt, sand, or gravel and pay for the same out of the state highway fund. ~~Said~~ The land or material, dirt, sand, or gravel may be acquired either by purchase or condemnation and any cost or expense of purchase or condemnation shall be paid for in the same manner as material, dirt, sand, or gravel or land is paid for. In case of condemnation, the proceedings provided for condemnation ~~of right-of-way and borrow pit~~ in §§ 31-19-1 to 31-19-19, inclusive, or the provisions of chapter 21-35 ~~shall be~~ are applicable and either proceeding may be used.